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DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Parts 204, 206, and 207

[Docket ID: FEMA-2016-0034]

RIN 1660-AA89

**Update of FEMA's Public Assistance and Fire Management Assistance Grant
Regulations to Reflect the Terminology of Uniform Administrative Requirements,
Cost Principles, and Audit Requirements**

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: The Federal Emergency Management Agency (FEMA) is amending its Public Assistance and Fire Management Assistance Grant regulations to update the terms it uses to describe grantees and subgrantees, to reflect the terminology used in the Office of Management and Budget (OMB) Uniform Guidance on Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

DATES: Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Christopher Logan, Director, Public Assistance Division, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, 202-646-3834.

SUPPLEMENTARY INFORMATION:

I. Background

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (Stafford Act), Title 42 of the United States Code (U.S.C.) 5121 et seq., authorizes the President to provide Federal assistance when the magnitude of an incident or threatened incident exceeds the affected State, Territorial, Indian Tribal, and local government capabilities to respond or recover. FEMA provides assistance to State, Territorial, Indian Tribal, and local governments and certain types of private nonprofit (PNP) organizations via its Public Assistance program. Through the Public Assistance program, FEMA provides supplemental Federal disaster grant assistance for debris removal, emergency protective measures, and the restoration of disaster-damaged, publicly owned facilities and the facilities of certain PNP organizations. The Public Assistance program also encourages protection of these damaged facilities from future events by providing assistance for hazard mitigation measures. FEMA regulations for the Public Assistance program are found at 44 CFR part 206. The regulations at 44 CFR part 207, “Management Costs,” also apply to Public Assistance awards.

Fire Management Assistance is available to States, local and tribal governments, for the mitigation, management, and control of fires on publicly or privately owned forests or grasslands, which threaten such destruction as would constitute a major disaster. FEMA Regional Administrators (RAs) have the authority to issue Fire Management Assistance Grant (FMAG) declarations for wildfires that threaten such destruction that would constitute a major disaster. The regulations governing the FMAG program are found at 44 CFR part 204.

The Office of Management and Budget (OMB) establishes Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, found at 2 CFR part 200. These regulations apply to awards under FEMA's Public Assistance and FMAG programs.

II. The Adoption of Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

On December 26, 2013, OMB published final government-wide guidance entitled, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. 78 FR 78589. The Uniform Guidance set standard requirements for Federal awards across the entire Federal government and consolidated the language from OMB circulars into one set of guidance that is located at 2 CFR part 200. In December 2014, OMB and Federal award-making agencies published a joint interim final rule that implemented the Uniform Guidance. 79 FR 75871. DHS adopted the Uniform Guidance at 2 CFR part 3002.

In the interim final rule, FEMA amended 44 CFR via a technical amendment that removed part 13 (FEMA's grant administration regulations) and replaced all references to part 13 with references to 2 CFR parts 200 and 3002. FEMA replaced general references to part 13 with the general citations to 2 CFR parts 200 and 3002. To the extent applicable, FEMA also replaced references to specific portions of part 13 with the corresponding pinpoint citations to 2 CFR parts 200 and 3002.

FEMA adopted the interim final rule as final, with one change, on October 2, 2015. 80 FR 59549. The change was a reinsertion of a provision that was inadvertently removed by the interim final rule.

III. Revisions to 44 CFR Parts 204 and 206

In this final rule, FEMA is updating its Public Assistance and FMAG program regulations to reflect two terms used in 2 CFR part 200. The Uniform Guidance uses the terms “recipient” and “subrecipient” when referring to entities that receive Federal awards, whereas FEMA’s regulations use the terms “grantee” and “subgrantee” when referring to entities that receive Federal awards under FEMA Public Assistance and FMAG grant programs. To improve consistency with the Uniform Guidance, FEMA is replacing the term “grantee” with “recipient” and the term “subgrantee” with “subrecipient” throughout 44 CFR part 204 and 44 CFR part 206, subparts G, H, and I. Although grantees and subgrantees, as defined in 44 CFR parts 204 and 206, are considered to be recipients and subrecipients under 2 CFR part 200, FEMA intends to use comparable terms to avoid confusion and provide consistency between applicable regulations and Public Assistance policy.¹

FEMA is not making substantive revisions to the current definitions for the terms “grantee” and “subgrantee.” The Uniform Guidance provides that “[d]ifferent definitions [of the terms “recipient” and “subrecipient,” among other terms] may be found in Federal statutes or regulations that apply more specifically to particular programs or activities.” 2 CFR 200.1. As such, although FEMA is replacing the terms “grantee” and “subgrantee” with the terms “recipient” and “subrecipient,” respectively, FEMA is continuing to use

¹ FEMA has updated its Public Assistance program policy to reflect terms used in 2 CFR part 200. Public Assistance Program and Policy Guide, FP 104-009-2 (January 2016).

the definitions for these terms at 44 CFR part 204 and 44 CFR part 206, subpart G, which apply more specifically to the Public Assistance and FMAG programs.²

FEMA is also replacing remaining references to 44 CFR part 13 with references to 2 CFR part 200. This is a technical change to correct citations that were not updated by the December 19, 2014 joint interim final rule. Finally, FEMA is correcting two typographical errors to citations in 44 CFR part 206. In § 206.222(b), the reference to § 205.221(e) will be corrected to § 206.221(e). In § 206.226(f)(2), the reference to paragraph (d)(1) will be corrected to paragraph (f)(1).

IV. Revisions to 44 CFR Part 207

The regulations at 44 CFR part 207, “Management Costs,” apply to Public Assistance and Hazard Mitigation Grant Program (HMGP) awards. To ensure consistency with the terminology used in both Public Assistance and HMGP regulations, FEMA is revising the definitions of “Grantee” and “Subgrantee” in 44 CFR part 207 to make clear that in part 207 as well, the terms “Grantee” and “Recipient” are interchangeable, as are the terms “Subgrantee” and “Subrecipient.” This is a non-substantive change to make it clear that the terms are interchangeable and that 44 CFR part 207 applies to Public Assistance and HMGP awards regardless of the terminology used in the program regulations.

This rule makes technical and nomenclature changes intended to reduce confusion and encourage the use of consistent terminology in the administration of Public Assistance and FMAG awards.

V. Regulatory Analyses

² Because FEMA is replacing the terms in existing definitions, we are redesignating the paragraphs in § 206.201 to maintain alphabetical order.

A. Administrative Procedure Act

FEMA did not undertake notice and comment for this regulation because it is making purely technical and non-substantive terminology changes. The Administrative Procedure Act (APA) provides that an agency may dispense with notice and comment rulemaking procedures when an agency, for good cause, finds those procedures are impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b). FEMA finds that such procedures are unnecessary for this rule because this rule makes technical updates and non-substantive terminology changes to improve consistency with 2 CFR part 200, and does not change any regulatory requirements. For instance, this rule will not change the requirements to request assistance, the eligibility requirements to receive assistance, the amount of assistance available, or the appeals process under the FMAG or Public Assistance programs. The changes made by this rule do not change or confer any substantive rights, benefits or obligations. For the same reasons, under 5 U.S.C. 553(d)(3), FEMA finds that it has good cause to make this final rule effective immediately.

B. Executive Order 12866, as amended, Regulatory Planning and Review; Executive Order 13563, Improving Regulation and Regulatory Review

Executive Orders 13563 and 12866 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a

“significant regulatory action,” under section 3(f) of Executive Order 12866.

Accordingly, the rule has not been reviewed by the Office of Management and Budget.

As this rule involves non-substantive changes that will not change FEMA’s administration of the subject regulations, FEMA expects that the rule will not impose any costs on the public.

C. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, as amended, (5 U.S.C. 601–612), agencies must consider the impact of their rulemakings on “small entities” (small businesses, small organizations and local governments) when issuing a notice of proposed rulemaking. As FEMA is not issuing a proposed rule for this action, the Regulatory Flexibility Act does not apply.

List of Subjects

44 CFR Part 204

Administrative practice and procedure, Fire prevention, Grant programs, and Reporting and recordkeeping requirements.

44 CFR Part 206

Administrative practice and procedure, Coastal zone, Community facilities, Disaster assistance, Fire prevention, Grant programs-housing and community development, Housing, Insurance, Intergovernmental relations, Loan programs-housing and community development, Natural resources, Penalties, and Reporting and recordkeeping requirements.

44 CFR Part 207

Administrative practice and procedure, Disaster assistance, Grant programs, and Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, and under the authorities listed below, the Federal Emergency Management Agency amends 44 CFR Chapter I as follows:

PART 204—FIRE MANAGEMENT ASSISTANCE GRANT PROGRAM

1. The authority citation for part 204 continues to read as follows:

Authority: 42 U.S.C. 5121 through 5207; 6 U.S.C. 101 et seq.; Department of Homeland Security Delegation 9001.1.

§ 204.3 [Amended]

2. In § 204.3—

- a. Revise the defined term “Grantee” to read “Recipient” and place the definition in appropriate alphabetical order;
- b. Revise the defined term “Subgrantee” to read “Subrecipient” and place the definition in appropriate alphabetical order;
- c. Remove the word “Grantee” wherever it appears and add in its place the word “recipient”;
- d. Remove the word “grantee” wherever it appears and add in its place the word “recipient”; and
- e. Remove the word “subgrantee” wherever it appears and add in its place the word “subrecipient”.

§ 204.25 [Amended]

3. In § 204.25(a), remove the word “Grantee” and add in its place the word “recipient”.

§ 204.41 [Amended]

4. In § 204.41(a) introductory text, remove the word “Grantee” and add in its place the word “recipient”.

§ 204.42 [Amended]

5. In § 204.42(a)(3), remove the word “Grantees” and add in its place the word “Recipients” and remove the word “subgrantees” and add in its place the word “subrecipients”.

§ 204.43 [Amended]

6. In § 206.43(c), remove the word “subgrantee’s” and add in its place the word “subrecipient’s”.

§ 204.51 [Amended]

7. In § 204.51, remove the word “Grantee” wherever it appears and add in its place the word “recipient”.

§ 204.52 [Amended]

8. In § 204.52, remove the word “Grantee” wherever it appears and add in its place the word “recipient”.

§ 204.53 [Amended]

9. In § 204.53(a), remove the word “Grantee” and add in its place the word “recipient”.

§ 204.54 [Amended]

10. In § 204.54—

- a. In the introductory text, remove the word “subgrantee” and add in its place the word “subrecipient” and remove the word “grantee” and add in its place the word “recipient”;
- b. In paragraph (a), remove the words “grantee-related” and add in their place the words “recipient-related”, remove the word “grantee” wherever it appears and add in its place

the word “recipient”, and remove the word “subgrantee” wherever it appears and add in its place the word “subrecipient”;

c. In paragraph (c)(2), remove the word “subgrantee” and add in its place the word “subrecipient” and in paragraph (c)(3), remove the word “grantee” wherever it appears and add in its place the word “recipient”; and

d. In paragraph (d), remove the word “grantee” and add in its place the word “recipient”.

§ 204.62 [Amended]

11. In § 204.62(c), remove the word “Grantee” and add in its place the word “recipient” and remove the word “subgrantee” and add in its place the word “subrecipient”.

§ 204.63 [Amended]

12. In § 204.63(b), remove the word “Grantee’s” and add in its place the word “recipient’s”.

§ 204.64 [Amended]

13. In § 204.64(b)(1), remove the word “Grantee” and add in its place the word “recipient” and remove the word “subgrantees” and add in its place the word “subrecipients”.

PART 206—FEDERAL DISASTER ASSISTANCE

14. The authority citation for part 206 continues to read as follows:

Authority: Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 through 5207; Homeland Security Act of 2002, 6 U.S.C. 101 et seq.;

Department of Homeland Security Delegation 9001.1; sec. 1105, Pub. L. 113-2, 127 Stat. 43 (42 U.S.C. 5189a note).

§ 206.120 [Amended]

15. In § 206.120(d)(4)(iv)(A), remove the words “44 CFR 13.41” and add in their place the words “2 CFR 200.327”.

§ 206.200 [Amended]

16. In § 206.200(b), remove the word “Grantee” wherever it appears and add in its place the word “recipient”, remove the word “subgrantee” and add in its place the word “subrecipient”; and remove the word “subgrantees” wherever it appears and add in its place the word “subrecipients”.

17. In § 206.201—

- a. In paragraph (a), remove the word “Grantee” and add in its place the word “recipient”;
- b. Remove paragraph (e);
- c. Redesignate paragraph (e) as paragraph (m); and redesignate paragraphs (f) through (m) as paragraphs (e) through (l);
- d. In newly redesignated paragraph (l), remove the word “Grantee” and add in its place the word “recipient”;
- e. Add new paragraph (m);
- f. In paragraph (n), remove the word “grantee” and add in its place the word “recipient”; and remove the word “subgrantee” and add in its place the word “subrecipient”; and
- g. Revise the paragraph (o) heading to read “Subrecipient” and in paragraph (o), remove the word “grantee” and add in its place the word “recipient”.

The addition reads as follows:

§ 206.201 Definitions used in this part.

* * * * *

(m) *Recipient*. Recipient means the government to which a grant is awarded, and which is accountable for the use of the funds provided. The recipient is the entire legal entity even if only a particular component of the entity is designated in the grant award document.

Generally, except as provided in §206.202(f), the State for which the emergency or major disaster is declared is the recipient. However, an Indian Tribal government may choose to be a recipient, or it may act as a subrecipient under the State. If an Indian Tribal government is the recipient, it will assume the responsibilities of the “recipient” or “State” as described in this part with respect to administration of the Public Assistance program.

* * * * *

§ 206.202 [Amended]

18. In § 206.202—

- a. In paragraph (a), remove the word “Grantee” wherever it appears and add in its place the word “recipient”;
- b. In the paragraph (b) heading, remove the word “Grantee” and add in its place the word “Recipient”;
- c. In paragraph (b)(1), remove the word “subgrantees” and add in its place the word “subrecipients”;
- d. In paragraphs (c) and (e), remove the word “Grantee” wherever it appears and add in its place the word “recipient”;

e. In paragraph (f)(1)(i), remove the word “grantee” and add in its place the word “recipient”; and

f. In paragraph (f)(2), remove the word “Grantees” and add in its place the word “recipient”, remove the word “grantee’s” and add in its place the word “recipient’s”, and remove the word “subgrantee’s” and add in its place the word “subrecipient’s”.

§ 206.203 [Amended]

19. In § 206.203—

a. In paragraph (c)(1), remove the word “grantee” and add in its place the word “recipient”;

b. In paragraph (d)(1), remove the word “subgrantee” and add in its place the word “subrecipient”; and remove the word “Grantee’s” and add in its place the word “recipient’s”;

c. In paragraph (d)(2) introductory text, remove the word “subgrantee” and add in its place the word “subrecipient” and remove the word “Grantee” and add in its place the word “recipient”; and

d. In paragraph (d)(2)(v), remove the word “Grantee” wherever it appears and add in its place the word “recipient”.

§ 206.204 [Amended]

20. In § 206.204—

a. In paragraph (c)(2), remove the word “Grantee” wherever it appears and add in its place the word “recipient” and in paragraph (c)(2)(ii), remove the word “subgrantee” and add in its place the word “subrecipient”;

- b. In paragraph (d) introductory text, remove the word “Grantee’s” and add in its place the word “recipient’s” and remove the word “Grantee” and add in its place the word “recipient”;
- c. In paragraph (d)(2), remove the word “Grantee” and add in its place the word “recipient”; and remove the word “grantee” and add in its place the word “recipient”;
- d. In paragraph (e), remove the word “subgrantee” wherever it appears and add in its place the word “subrecipient”;
- e. In paragraph (e)(2), remove the word “Grantee” wherever it appears and add in its place the word “recipient”; and
- f. In paragraph (f), remove the word “Grantee” wherever it appears and add in its place the word “recipient” and remove the word “grantee” and add in its place the word “recipient”.

§ 206.205 [Amended]

21. In § 206.205(a) and (b), remove the word “Grantee” wherever it appears and add in its place the word “recipient”; and remove the word “subgrantee” wherever it appears and add in its place the word “subrecipient”.

§ 206.206 [Amended]

22. In § 206.206—

- a. In the introductory text and paragraphs (a), (c), and (d), remove the word “grantee” wherever it appears, and add in its place the word “recipient”; and remove the word “subgrantee” wherever it appears and add in its place the word “subrecipient”; and
- b. In paragraph (a), remove the words “grantee-related” and add in their place the words “recipient-related”.

§ 206.207 [Amended]

23. In § 206.207—

- a. In paragraph (b)(1)(iii)(D), remove the word “subgrantees” and add in its place the word “subrecipients”;
- b. In paragraph (b)(1)(iii)(F), remove the word “grantee” and add in its place the word “recipient”;
- c. In paragraph (b)(1)(iii)(K), remove the word “grantee” and add in its place the word “recipient”, remove the word “subgrantees” and add in its place the word “subrecipients”, and remove the word “subgrantee” and add in its place the word “subrecipient”;
- d. In paragraph (b)(2), remove the word “Grantee” and add in its place the word “recipient”;
- e. In paragraph (b)(3) and (4), remove the word “Grantee” wherever it appears and add in its place the word “recipient”; and
- f. In paragraph (c)(1), remove the word “grantees” and add in its place the word “recipients” and remove the word “subgrantees” and add in its place the word “subrecipients”.

§ 206.208 [Amended]

24. In § 206.208, in paragraphs (a), (b) introductory text, and (e)(1) and (2), remove the word “Grantee” wherever it appears and add in its place the word “recipient”.

§ 206.209 [Amended]

25. In § 206.209—

- a. In paragraph (b) introductory text, remove the word “subgrantee” and add in its place the word “subrecipient”;

b. In paragraphs (e), (f), and (i)(2), remove the word “Grantee” wherever it appears and add in its place the word “recipient”; and

c. In paragraph (e)(3), remove the word “Grantee’s” and add in its place the word “recipient’s”.

26. In § 206.210—

a. In paragraph (a), remove the word “subgrantee” and add in its place the word “subrecipient”;

b. In paragraph (b), remove the definition of “Grantee” and add a definition for “Recipient” in alphabetical order;

c. In paragraph (b), remove the word “grantee” wherever it appears and add in its place the word “recipient”;

d. In paragraphs (f), (g), (h)(1)(i) and (ii), (h)(2)(iii), and (h)(3), remove the word “grantee” wherever it appears and add in its place the word “recipient”;

e. In the paragraph (h)(1) heading, remove the word “Grantee” and add in its place the word “Recipient”; and

f. In paragraph (h)(1)(i), remove the word “grantee’s” and add in its place the word “recipient’s”.

The addition reads as follows:

§ 206.210 Dispute Resolution Pilot Program.

* * * * *

(b) * * *

Recipient is used throughout this regulation text and it refers to the definition in FEMA's regulations at 44 CFR 206.201(m).

* * * * *

§ 206.222 [Amended]

27. In § 206.222(b), remove the reference “§ 205.221(e)” and add in their place the reference “§ 206.221(e)”.

§ 206.226 [Amended]

28. In § 206.226—

- a. In paragraph (a)(2), remove the word “grantees” and add in its place the word “recipients”;
- b. In paragraph (b), remove the word “grantee” and add in its place the word “recipient”;
and
- c. In paragraph (f)(2), remove the words “paragraph (d)(1)” and add, in their place, the words “paragraph (f)(1)”.

§ 206.228 [Amended]

29. In § 206.228—

- a. In the introductory text, remove the words “44 CFR 13.22” and add in their place the words “2 CFR 200, subpart E” and remove the words “44 CFR 13.4 and 13.6” and add in their place the words “2 CFR 200, subpart E and 2 CFR 200.102”; and
- b. In paragraphs (a)(2) introductory text and (a)(2)(ii), remove the word “grantee’s” wherever it appears and add in its place the word “recipient’s” and remove the word “subgrantee’s” wherever it appears and add in its place the word “subrecipient’s”.

§ 206.250 [Amended]

30. In § 206.250(b), remove the word “Grantee” and add in its place the word “recipient”.

§ 206.252 [Amended]

31. In § 206.252—

- a. In paragraph (c), remove the word “Grantee” and add in its place the word “recipient” and remove the word “grantee” and add in its place the word “recipient”; and
- b. In paragraph (d), remove the word “grantee” and add in its place the word “recipient” and remove the word “subgrantee” and add in its place the word “subrecipient”.

§ 206.253 [Amended]

32. In § 206.253—

- a. In paragraphs (a), (c), and (e), remove the word “Grantee” wherever it appears and add in its place the word “recipient”; and
- b. In paragraphs (b)(1) and (c), remove the word “grantee” wherever it appears and add in its place the word “recipient”.

PART 207—MANAGEMENT COSTS

33. The authority citation for part 207 continues to read as follows:

Authority: Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 through 5206; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; Homeland Security Act of 2002, 6 U.S.C. 101; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; E.O. 13286, 68 FR 10619, 3 CFR, 2003 Comp., p. 166.

§ 207.2 [Amended]

34. In § 207.2—

- a. Revise the defined term “Grantee” to read “Grantee (alternatively, Recipient)”; and
- b. Revise the defined term “Subgrantee” to read “Subgrantee (alternatively, Subrecipient)”.

Dated: December 21, 2016.

W. Craig Fugate

Administrator,

Federal Emergency Management Agency.

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